

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. N-05/09-293
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services Division closing the petitioners Reach Up Financial Assistance (RUFA) benefits and imposing a disqualification period before she can again become eligible for those benefits. The issue is whether the petitioner is disqualified from receiving RUFA due to her receipt of a lump sum personal injury settlement. The following facts are not in dispute.

FINDINGS OF FACT

1. In February 2009 the petitioner was a recipient of RUFA benefits. That month the petitioner reported to the Department that she had received an insurance settlement of \$5,305.02.

2. On March 19, 2009 the Department issued a decision closing the petitioner's RUFA grant and assessing a disqualification period (see *infra*). The issue in the case is whether certain bills the petitioner paid out of her lump

income should be considered "eligible expenses" that can be deducted from the lump sum in determining the length of the petitioner's disqualification from RUFA.

3. Following the petitioner's request for hearing, and upon the petitioner furnishing further documentation, the Department determined that several of the payments the petitioner made when she received her lump sum would be allowed, and the Department has recalculated the petitioner's disqualification period accordingly.

4. The remaining expenses in dispute are two checks for \$1,000 each the petitioner paid on February 19, 2009. The first was to the Essex County Court, which the petitioner alleges was for a "forensic" psychological evaluation of her and her son pursuant to an ongoing custody dispute the petitioner was engaged in involving her son. The other \$1,000 was to a friend as "reimbursement" for day care and transportation for her and her son to unspecified visitations and medical appointments in 2007 and 2008.

5. Other than a letter from her primary care physician that he had "ordered" the psychological evaluation, and from her friend stating that she provided "transportation . . . for the last two years", the petitioner has provided no further details or documentation regarding either expense.

6. The petitioner does not appear to dispute the Department's position that the petitioner and her son were covered by Medicaid during the period in question, that Medicaid as a general matter covers medically necessary psychological evaluations and transportation services, and that, to date, the petitioner has not requested coverage under Medicaid for any of these expenses.

7. There is also no indication that the petitioner ever identified or claimed a legal or medical need for child care or transportation services, which might well have been considered a covered service under Reach Up.

8. There is also no evidence that the friend who provided transportation did so with any expectation of payment.

ORDER

The Department's decision is affirmed.

REASONS

The regulations regarding lump sum income at W.A.M. § 2270.1 include the following provisions:

2250.1 Lump Sum Income

The applicant or recipient of Reach Up is responsible for notifying the Department promptly upon receipt of any lump sum payment of earned or unearned income.

Lump sum payments, including windfall payments, shall be counted as income unless excluded under an exception cited below.

. . .

Lump sum payments which are not excluded should be added together with all other non-Reach Up income received by the assistance group during the month. When the total less applicable disregards exceeds the standard of need for that family, the family will be ineligible for ANFC for the number of full months derived by dividing this total income by the need standard applicable to the family. Any remaining income will be applied to the first month of eligibility after the disqualification period.

The period of ineligibility due to a lump sum benefit may be recalculated if:

- A. An event occurs which, had the family been receiving assistance, would have changed the amount paid.
- B. The income received has become unavailable to the family for circumstances beyond its control. Such circumstances are limited to the following unless the Commissioner or his or her designee determines that the recipient's circumstances are substantially similar to those described below:
 - 1. death or incapacity of the principal wage earner.
 - 2. loss of shelter due to fire or flood.
 - 3. repairs to owner-occupied homes which are essential to the health and safety of the family.
 - 4. repair or replacement of essential, major household appliances.

5. repair or purchase of one motor vehicle per Reach Up assistance group, essential for employment, education, training or other day-to-day living necessities. Expenses may include purchase and use tax, inspection fee, insurance, and registration fees, but not day-to-day operating expenses.
6. payments attributable to current monthly housing expenses (as defined in WAM 2264) which are in excess of the maximum monthly Reach Up housing allowance. Advance payments (i.e. payments for expenses which will be incurred after the period of ineligibility has ended) toward excess monthly housing expenses are not allowed.
7. payment of expenses which meet the following criteria:
 - a. The bills were overdue as of the date of lump sum income was received.
 - b. The bills were the legal liability of the client or other member of the assistance group.
 - c. The client provides documentation that the lump sum income was used to pay the bills.

Eligible expenses under "7" above are as follows and are restricted to those of the primary residence and would include any late charges described in payment agreements or allowed by Public Service Board rules.

- a. overdue rent (including lot rent)
- b. overdue mortgage payments (principal and interest)
- c. overdue property taxes
- d. overdue homeowner's insurance
- e. overdue heating bills
- f. overdue utility bills (e.g. electricity, gas, water, or sewage)
- g. overdue telephone bills (basic monthly charge, applicable taxes, plus \$5 per month in toll charges)
- h. overdue child care expenses necessary for a member of the assistance group to

maintain employment, with the following limitation. If the overdue expenses were incurred when the individual was receiving Reach Up, only the unsubsidized amounts attributable to employment-related child care are considered eligible expenses.

- i. overdue expenses for one motor vehicle per Reach Up assistance group, essential for employment, education, training or other day-to-day living necessities. Expenses may include overdue bills for repairs, purchase and use tax, inspection fee, insurance, and registration fees, but not day-to-day operating expenses.

C. The family incurs and pays for medical expenses which offset the lump sum income.

In this case, the petitioner argues that the forensic psychological evaluation should be allowed under paragraph C, above, as a medical expense. If this were the case, however, there does not appear to be any reason why Medicaid wouldn't cover it, even retroactively. It would take an unreasonably expansive reading of the above provisions to in effect allow recipients to eschew Medicaid coverage when claiming medical deductions from lump sums. The petitioner is free to submit this claim to Medicaid for retroactive coverage, and to seek reimbursement from the provider if the claim is approved.

A similar analysis applies to the payment to the petitioner's friend for "transportation", which the petitioner claims was for medical appointments and court-

ordered visitations. To the extent that the transportation was for medical purposes, the petitioner could have requested Medicaid coverage. To the extent it was necessary for family unity and the emotional needs of her and her child, the petitioner could have sought out Reach Up Support Services. (See W.A.M. § 2313.) At any rate, on the basis of the evidence provided by the petitioner, it is difficult to credit the claim that these expenses came to \$1,000. Moreover, in the absence of any evidence that the services were provided with any expectation of payment, it cannot be concluded that any payment for them was "overdue" or that making the payment rendered this portion of the lump sum "unavailable to the family for circumstances beyond its control", within the meaning and contemplation of the above regulation.

For the above reasons, it must be concluded that the Department's decision in the matter is in accord with the above regulation and, therefore, must be affirmed. 3 V.S.A. § 3091(d), fair Hearing Rule No. 1000.4D.

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